

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

KAY FRITZ,)	
)	
Plaintiff,)	
)	
v.)	No.: 3:14-CV-25-PLR-HBG
)	
CVS PHARMACY, et al.,)	
)	
Defendants.)	

MEMORANDUM OPINION

On March 6, 2014, the Honorable H. Bruce Guyton, United States Magistrate Judge, entered a Report and Recommendation recommending that Plaintiff's Complaint be dismissed for jurisdictional deficiencies and pursuant to 28 U.S.C. § 1915(e) [R. 6]. This matter is presently before the Court on Plaintiff's objections to the Report and Recommendation [R. 9, 11].

As required by 28 U.S.C. § 636(b)(1), the Court has undertaken a *de novo* review of those portions of the Report and Recommendation to which Plaintiff objects. After carefully considering the record in this case, Plaintiff's objections, and the applicable law, the Court finds itself in agreement with Magistrate Judge Guyton's recommendation that this matter be dismissed for jurisdictional deficiencies.

As noted by Magistrate Judge Guyton, Plaintiff's Complaint alleges that a CVS pharmacist, on an unspecified date, gave her the "wrong medications". Plaintiff has sued

CVS and various individuals in Hamilton County Circuit Court. She alleges that the defendants denied her discovery, and that she hasn't been given a trial date. She claims that her civil rights have been violated by the state court. Plaintiff asks the District Court to order that she be given discovery, a trial date, and a jury trial in her state court action. Magistrate Judge Guyton found that Plaintiff has not alleged a cause of action arising out of the Constitution, laws, or treaties of the United States, and there are no facts alleged which support diversity jurisdiction. Thus, Magistrate Judge Guyton found that Plaintiff has failed to demonstrate any grounds for federal jurisdiction in this case, and he recommended that the Complaint be dismissed.

Pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(i) and (ii), the District Court may dismiss a complaint as frivolous or if it fails to state a claim upon which relief can be granted. *See Neitzke v. Williams*, 490 U.S. 319 (1989). The substance of Plaintiff's Complaint appears to constitute a claim for negligence against CVS. The record also shows that Plaintiff has an action against CVS pending in the Hamilton County Circuit Court. It appears that Plaintiff is unhappy with the progress of her case in the state court, and she is asking the District Court to intervene on her behalf.

The record supports Magistrate Judge Guyton's analysis that Plaintiff's Complaint fails to allege a cause of action arising out of the Constitution, laws, or treaties of the United States, and there are no facts alleged which support diversity jurisdiction. Moreover, under the *Younger* abstention doctrine, a federal court must decline to interfere with pending state civil or criminal proceedings when important state interests are involved. *See O'Neill v. Coughlan*, 511 F.3d 638 (6th Cir. 2008). There are three

requirements for proper invocation of *Younger* abstention: (1) there must be on-going state judicial proceedings; (2) those proceedings must implicate important state interests; and (3) there must be an adequate opportunity in the state proceedings to raise constitutional challenges. *Squire v. Coughlan*, 469 F.3d 551, 555 (6th Cir. 2006). Here, the Court finds that Plaintiff's Complaint alleges on-going proceedings in the Hamilton County Circuit Court; involving a claim of negligence brought by a Tennessee resident which implicates important state interests; and that Plaintiff has an adequate opportunity to raise any constitutional challenges in the state court proceedings. Abstention by this Court is therefore appropriate.

In light of the foregoing discussion, as well as the reasons articulated by Magistrate Judge Guyton in his Report and Recommendation, Plaintiff's objections to the Report and Recommendation are hereby **OVERRULED** in their entirety, whereby the Report and Recommendation is **ACCEPTED IN WHOLE**. Accordingly, Plaintiff's Complaint is hereby **DISMISSED**.

Plaintiff's notice of appeal filed on March 14, 2014 [R. 8] is **DENIED** as moot, with leave to refile.

IT IS SO ORDERED.

s/ 
UNITED STATES DISTRICT JUDGE